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Nos. 99-1239 and 99-1261

In the Supreme Court of the United States

OGLALA SIOUX TRIBAL PUBLIC SAFETY DEPARTMENT, PETITIONER

v.

BRUCE BABBITT, SECRETARY OF THE INTERIOR

MICCOSUKEE CORPORATION, PETITIONER

v.

BRUCE BABBITT, SECRETARY OF THE INTERIOR

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Miccosukee Corporation and the Oglala Sioux Tribal Public Safety Department, both tribal organizations, were entitled to full funding of the contract support costs associated with their provision of services to their respective Tribes, where the statutory and contractual provisions relating to payment of those costs make payment subject to the availability of appropriations, and where Congress specifically capped appropriations for contract support costs at a level insufficient to provide full funding.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	2
Statement	2
Argument	8
Conclusion	17

TABLE OF AUTHORITIES

Cases:

Bailey v. *United States*, 516 U.S. 137 (1995)	10
Connecticut Nat'l Bank v. *Germain*, 503 U.S. 249 (1992)	8
Heckler v. *Community Health Servs.*, 467 U.S. 51 (1984)	16
Moskal v. *United States*, 498 U.S. 103 (1990)	11
New York Airways, Inc. v. *United States*, 369 F.2d 743 (Ct. Cl. 1966)	7, 14
OPM v. *Richmond*, 496 U.S. 414 (1990)	7, 17
Ramah Navajo Chapter v. *Lujan*, 112 F.3d 1455 (10th Cir. 1997)	7, 13
Ramah Navajo Sch. Bd., Inc. v. *Babbitt*, 87 F.3d 1338 (D.C. Cir. 1996)	3, 7, 9, 12, 13
Rubin v. *United States*, 449 U.S. 424 (1981)	8
South Carolina v. *Catawba Indian Tribe, Inc.*, 476 U.S. 498 (1986)	16
United States v. *Ron Pair Enters.*, 489 U.S. 235 (1989)	15
United States v. *Winstar Corp.*, 518 U.S. 839 (1996)	15
Varity Corp. v. *Howe*, 516 U.S. 489 (1996)	11
West Virginia Univ. Hosps., Inc. v. *Casey*, 499 U.S. 83 (1991)	16

Case—Continued: Page

Yankee Atomic Elec. Co. v. *United States*, 112 F.3d 1569 (Fed. Cir. 1997), cert. denied, 524 U.S. 951 (1998) 15

Constitution and statutes:

U.S. Const. Art. I, § 9, Cl. 7 (Appropriations Clause) 10

Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 *et seq.*:

25 U.S.C. 450-450n (1994 & Supp. IV 1998) 2, 8

25 U.S.C. 450a(b) 2

25 U.S.C. 450f 3

25 U.S.C. 450j(c) 9

25 U.S.C. 450j(c)(2) 9, 11

25 U.S.C. 450j-1 ..... 10, 11, 12

25 U.S.C. 450j-1(a) 8, 9, 10, 11

25 U.S.C. 450j-1(a)(1) 3

25 U.S.C. 450j-1(a)(2) 3

25 U.S.C. 450j-1(b) ..... *passim*

25 U.S.C. 450*l*(a) 3, 11

25 U.S.C. 450*l*(c) 3, 4, 9, 11, 14, 15

Interior Appropriations Act of 1994, Pub. L. No. 103-138, Tit. I, 107 Stat. 1379 4

107 Stat. 1391 4

Interior Appropriations Act of 1995, Pub. L. No. 103-332, 108 Stat. 2511 5

Miscellaneous:

58 Fed. Reg. 68,694 (1993) 5

59 Fed. Reg. 55,318 (1994) 5

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OPINIONS BELOW

The opinion of the court of appeals in No. 99-1239, *Oglala Sioux Tribal Public Safety Department* v. *Babbitt* (*Oglala Sioux*) (Oglala Pet. App. A1-A21),[1] is

[1] The petition for a writ of certiorari in No. 99-1239, *Oglala Sioux Tribal Public Safety Department* v. *Babbitt*, is referenced herein as "Oglala Pet.," and the Appendix to that petition as "Oglala Pet. App." The petition in No. 99-1261, *Miccosukee Corporation* v. *Babbitt*, is referenced as "Miccosukee Pet.," and the Appendix to that petition as "Miccosukee Pet. App."

reported at 194 F.3d 1374. The decision of the United States Department of the Interior Board of Contract Appeals (Oglala Pet. App. B78-B82) is reported at IBCA No. 3680-97, 98-2 BCA (CCH) ¶ 29,833, *available in* 1998 WL 347090 (June 24, 1998).

The opinion of the court of appeals in No. 99-1261, *Miccosukee Corp.* v. *Babbitt* (*Miccosukee*) (Miccosukee Pet. App. 1a-2a) is unreported. The decision of the IBCA (Miccosukee Pet. App. 22a-74a) is reported at IBCA Nos. 3463-3466 & 3560-3562, 98-2 BCA (CCH) ¶ 29,832 (Mar. 2, 1998).

JURISDICTION

The judgment of the court of appeals in *Oglala Sioux* was entered on October 27, 1999, and the petition for a writ of certiorari was filed on January 24, 2000. The judgment of the court of appeals in *Miccosukee* was entered on October 29, 1999, and the petition for a writ of certiorari was filed on January 27, 2000. This Court's jurisdiction is invoked in both cases under 28 U.S.C. 1254(1).

STATEMENT

1. The Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 450-450n (1994 & Supp. IV 1998), was enacted in 1975 to permit Indian Tribes to contract with the Secretary of the Interior (the Secretary) to administer programs that otherwise would be controlled and operated by the Secretary. The ISDA was intended to ensure "effective and meaningful participation by the Indian people in the planning, conduct, and administration" of federal services and programs provided to the Tribes and their members. 25 U.S.C. 450a(b). To advance that purpose, the ISDA provides that, at the request of a Tribe, a Tribe and the Secretary may enter into a "self-

determination contract" under which the Tribe or a tribal entity takes over the administration of certain federal programs for the Tribe. 25 U.S.C. 450f. See *Ramah Navajo Sch. Bd., Inc.* v. *Babbitt*, 87 F.3d 1338, 1341 (D.C. Cir. 1996) ("The ISDA directs the Secretary * * * to turn over to that Tribe the direct operation of its federal Indian Programs."). Self-determination contracts must incorporate the provisions of a model contract contained in the ISDA itself. See 25 U.S.C. 450*l*(a) and (c).

The ISDA requires the Secretary to fund direct and indirect costs in support of self-determination contracts. Direct costs are those amounts the "Secretary would have otherwise provided for the operation of the programs" if the Secretary himself had retained operation of the programs. 25 U.S.C. 450j-1(a)(1). Indirect costs, or contract support costs (CSCs), "consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor." 25 U.S.C. 450j-1(a)(2).[2] The provision of funds to cover direct and indirect costs, however, is limited by a succeeding provision of the ISDA, Section 450j-1(b), which is entitled "Reductions and increases in amount of funds provided." Section 450j-1(b) declares that, "[n]otwithstanding any other provision in this subchapter, the provision of funds under this subchapter is subject to the availability of appropriations." 25 U.S.C. 450j-1(b). Section 450*l*(c) incorporates that same limit

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[2] The indirect cost rate is a percentage determined by annual negotiations between the contracting party and the Department of the Interior's Office of the Inspector General. The amount of reimbursement for indirect costs is calculated by multiplying the indirect cost rate by the total direct costs of the contracting party for the relevant fiscal year.

into the model contract, declaring that the Secretary shall "make available to the Contractor the total amount specified in" its contract, "[s]ubject to the availability of appropriations." 25 U.S.C. 450*l*(c).

2. This case arises out of self-determination contracts the Secretary entered into with the Miccosukee Corporation (Miccosukee), a tribal corporation controlled by the Miccosukee Tribe of Indians of Florida, and with the Oglala Sioux Tribal Public Safety Department (Oglala), a tribal organization that handles public safety for the Oglala Sioux Tribe in South Dakota.

a. Miccosukee operated 12 self-determination contracts for services administered on behalf of the Miccosukee Tribe in the 1994 fiscal year. Miccosukee Pet. App. 26a. The "Indirect Cost Negotiated Agreement" signed by the Miccosukee Corporation in September of 1993, under the heading "LIMITATIONS," declared that "[u]se of the rates contained in this agreement is subject to any applicable statutory limitations." Miccosukee C.A. App. 69.

The Interior Appropriations Act of 1994, Pub. L. No. 103-138, Tit. I, 107 Stat. 1379, which governed funding of ISDA contracts for the 1994 fiscal year, capped funding of CSCs at slightly over $91 million, a level inadequate to fully fund all CSCs. Miccosukee Pet. App. 26a. In relevant part, the Interior Appropriations Act of 1994 stated as follows:

> *Provided Further*, That not to exceed $91,223,000 of the funds in this Act shall be available for payments to tribes and tribal organizations for indirect costs associated with contracts or grants or compacts authorized by the Indian Self Determination Act of 1975 * * *.

107 Stat. 1391.

Soon after that appropriations Act was passed, the Bureau of Indian Affairs (BIA), an arm of the Department of the Interior, published a notice in the Federal Register informing ISDA contractors that Congress had limited the amount of funding for CSCs, and that a shortfall of as much as $25 million was expected. See 58 Fed. Reg. 68,694 (1993). The Federal Register notice also explained how available funds would be distributed. *Ibid.*

Once the BIA determined the precise amount of the shortfall in June of 1994, it informed tribal contractors (including Miccosukee) that it would be able to fund only 81.2106% of each contractor's CSCs for the 1994 fiscal year. Miccosukee Pet. App. 27a. Miccosukee requested a contracting officer's decision to fully fund all of its CSCs notwithstanding the notice, and the contracting officer denied Miccosukee's claim. *Id.* at 28a.

b. Oglala operated a self-determination contract during the 1995 fiscal year. Its indirect cost agreement, like Miccosukee's, stated that use of the negotiated rates would be "subject to" applicable statutory limits. Oglala C.A. App. 20. For the 1995 fiscal year, Congress capped the appropriation for CSC payments at just under $96 million. See Interior Appropriations Act of 1995, Pub. L. No. 103-332, 108 Stat. 2511. Because that sum was insufficient to cover total CSC costs, the Secretary again published a notice in the Federal Register explaining how the Secretary planned to allocate available funds to pay indirect costs. See 59 Fed. Reg. 55,318 (1994). Ultimately, for the 1995 fiscal year, the Secretary was able to pay 91.74% of CSCs. In Oglala's case, that left $108,506 in CSCs unpaid for that year. Oglala sought full funding of its CSCs from the

contracting officer, and the officer denied Oglala's claim. Oglala Pet. 4.

3. Both Miccosukee and Oglala appealed to the Interior Board of Contract Appeals (IBCA or Board). The IBCA stayed Oglala's claim pending resolution of Miccosukee's. On cross-motions for summary judgment on liability, the IBCA granted Miccosukee's motion, finding that the ISDA entitled Miccosukee to full funding of all CSCs. Miccosukee Pet. App. 22a-72a. The IBCA then ordered the Secretary to show cause why summary judgment should not be granted to Oglala. After the Secretary submitted his argument, the IBCA granted summary judgment to Oglala for the reasons stated in its *Miccosukee* opinion. Oglala Pet. App. C78-C82.

4. The Secretary appealed both decisions. On October 27, 1999, the Court of Appeals for the Federal Circuit reversed the IBCA's decision in *Oglala*. Oglala Pet. App. A1-A21. The court of appeals explained that, under 25 U.S.C. 450j-1(b), any funds provided under an ISDA contract are subject to the availability of appropriations. Oglala Pet. App. A6 ("The language of § 450j-1(b) is clear and unambiguous; any funds provided under an ISDA contract are 'subject to the availability of appropriations.'"). That straightforward reading of the ISDA, the court explained, is consistent with other provisions of the Act. *Id.* at A6-A7. Moreover, the court continued, the Court of Appeals for the District of Columbia Circuit had construed the ISDA in an identical manner. See *id.* at A10 ("[T]he D.C. Circuit found the language of § 450j-1(b) as clear as we do.") (citing

Ramah Navajo Sch. Bd., Inc. v. *Babbitt*, 87 F.3d 1338 (D.C. Cir. 1996)).[3]

The court of appeals rejected Oglala's reliance on *New York Airways, Inc.* v. *United States*, 369 F.2d 743 (Ct. Cl. 1966). See Oglala Pet. App. A9-A10. In that case, the court of appeals explained, the government had failed to meet an unqualified payment obligation imposed by the contract. *Id.* at A10. Here, in contrast, the payment obligation was not unqualified. To the contrary, both the ISDA and the contract itself made payment contingent on the availability of appropriated funds. *Ibid.*

Finally, the court of appeals found that Oglala could not have reasonably relied on the expectation that it would receive full funding for CSCs in light of the "subject-to-availability-of-appropriations" language in the ISDA and the model contract. Oglala Pet. App. A12. In any event, the court of appeals continued, neither naked reliance nor estoppel can by itself obligate the federal government to pay money from the Treasury absent an appropriation by Congress *Ibid.* (citing *OPM* v. *Richmond*, 496 U.S. 414, 423-424 (1990)).

On October 29, 1999, the court of appeals reversed the IBCA's decision in *Miccosukee* for the reasons stated in the court's October 27, 1999 opinion in *Oglala*. Miccosukee Pet. App. 1a-2a. Because the court of appeals decided the *Miccosukee* case and the *Oglala* case on identical grounds, and because Miccosukee's

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[3] The court of appeals also distinguished *Ramah Navajo Chapter* v. *Lujan*, 112 F.3d 1455 (10th Cir. 1997). That decision, the court explained, did not deal with a shortfall caused by Congress's failure to appropriate funds and thus has no bearing on the meaning of Section 450j-1(b) or the result in this case. Oglala Pet. App. A11.

and Oglala's petitions rely on arguments that are substantially similar, we submit this consolidated opposition to both petitions for writs of certiorari.

ARGUMENT

Both petitioners contend that the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 450-450n (1994 & Supp. IV 1998), requires full funding and payment of their contract support costs, notwithstanding Congress's decision not to appropriate sufficient funds to cover the full amount of those costs. The court of appeals, however, correctly rejected that contention, and its decision does not conflict with any decision of this Court or any other court of appeals. Accordingly, further review is not warranted.

1. The provision of the ISDA governing contract funding and indirect costs, 25 U.S.C. 450j-1(a) and (b), is clear and unambiguous. Section 450j-1(b) states that, "[n]otwithstanding any other provision" of the ISDA regarding contract funding and direct costs, "the provision of funds under this subchapter is subject to the availability of appropriations." 25 U.S.C. 450j-1(b). In reading that provision to bar payment where Congress declines to appropriate funds, the court of appeals properly applied the elementary axiom that "[w]hen the words of a statute are unambiguous, then * * * 'judicial inquiry is complete.'" *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 254 (1992) (quoting *Rubin* v. *United States*, 449 U.S. 424, 430 (1981)).

The court of appeals' construction is also consistent with the structure of the ISDA as a whole. Section 450j-1(a), which is entitled "Amount of funds provided," establishes the amounts that must be provided to tribal organizations under ISDA contracts. Because Section 450j-1(b) is entitled "Reductions and increases in

amount of funds provided," and because it immediately follows Section 450j-1(a), it is most logically read as providing the conditions under which the Secretary may pay less (or more) than the amount otherwise provided by Section 450j-1(a).

Indeed, any ambiguity on that score is removed by 25 U.S.C. 450j(c) and 450*l*(c). Section 450j(c) establishes the duration of self-determination contracts, and it declares that "[t]he amounts of such contracts *shall be subject to the availability of appropriations.*" 25 U.S.C. 450j(c) (emphasis added). That the phrase "amounts of such contracts" in Section 450j(c) means the amounts payable under the contracts is made clear by 450j(c)(2), which declares that the "amounts of such contracts may be renegotiated annually to reflect change[s]" such as "cost increases beyond the control of the tribal organization." Section 450*l*(c), which establishes the terms of the model contract, similarly states that "the Secretary shall make available to the Contractor the total amount specified in the" ISDA contract, "[s]ubject to the availability of appropriations." 25 U.S.C. 450*l*(c).

Finally, the court of appeals' reading is consistent with the over-all function of the ISDA. The ISDA in effect permits the Secretary and Indian Tribes, by agreement, to substitute tribal organizations for the Department of the Interior in the administration and provision of various federal programs and services to Indian Tribes. See *Ramah Navajo Sch. Bd., Inc.* v. *Babbitt*, 87 F.3d 1338, 1341 (D.C. Cir. 1996) ("The ISDA directs the Secretary * * * to turn over to that Tribe the direct operation of its federal Indian Programs."). In so doing, the ISDA places the Tribe in many respects in the same position the Secretary would occupy, and subjects the Tribe to the same limits the Secretary would be subject to, if the Secretary continued to

operate the particular program himself. For example, the Secretary is required to pay the Tribes the amount the Secretary would have expended in providing those services himself. 25 U.S.C. 450j-1(a). Consistent with that general purpose of substituting tribal organizations for federal bureaucracy, Section 450j-1(b) also imposes on ISDA funding a limit that likewise applies to funding of programs directly administered by the Secretary. In the context of programs administered by the Secretary, the established rule, mandated by the Appropriations Clause of the Constitution, Art. I, § 9, Cl. 7, is that, where Congress refuses to appropriate funds for the programs, funds are unavailable and may not be spent on the programs. Section 450j-1(b) merely applies that same rule to the same programs where tribal organizations have taken over administration from the Secretary.

2. Petitioners nonetheless argue (Oglala Pet. 9-12; Miccosukee Pet. 14-17) that the court of appeals misinterpreted the text of Section 450j-1. In particular, they argue that Section 450j-1(a) mandates full funding of CSCs. Section 450j-1(b), they contend, only clarifies that the Secretary need not *disburse* funds that have not been appropriated. In essence, they argue that Section 450j-1(b), which states that "the *provision* of funds under [the ISDA] is subject to the availability of appropriations," 25 U.S.C. 450j-1(b) (emphasis added), should be read as declaring that "the *distribution* of funds under the [ISDA] is subject to the availability of appropriations." Miccosukee Pet. 19 (emphasis added).

Petitioners' reading asks this Court to depart from the rule that a word in a statute ordinarily must "be given its ordinary or natural meaning," *Bailey* v. *United States*, 516 U.S. 137, 145 (1995), and ignores the plain import of Section 450j-1(b), which on its face

places limitations on the payments to Tribes authorized by Section 450j-1(a). See *Varity Corp.* v. *Howe*, 516 U.S. 489, 511 (1996) (noting that the canon that "the specific governs the general" is "a warning against applying a general provision when doing so would undermine limitations created by a more specific provision"). Moreover, as petitioners concede (*e.g.*, Miccosukee Pet. 20), the Secretary would be barred from paying out funds on a program in excess of the amount appropriated therefor even if Section 450j-1(b) did not itself so provide. By interpreting Section 450j-1(b) as doing no more than to restate that legal rule, petitioners convert it into surplusage in contravention of a fundamental canon of statutory construction. See *Moskal* v. *United States*, 498 U.S. 103, 109-110 (1990).[4]

Finally, to the extent petitioners claim that Section 450j-1 distinguishes between the Secretary's authority to *enter into contracts* to obligate funds, and the Secretary's authority to distribute funds to *satisfy the contracts* (see Miccosukee Pet. 18), the contention is without merit. The restriction on payment in Section 450j-1(b), the provision that is at issue in this case, is a required component of every ISDA contract the Secretary enters into. See 25 U.S.C. 450*l*(a) and (c). It was, moreover, incorporated into both contracts at issue here. See Miccosukee C.A. App. 69; Oglala C.A. App. 20. It thus governs the provision of funds under the ISDA contracts in this case.

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[4] Petitioners also ignore the canon of construction requiring that similar statutory phrases be interpreted similarly. In Sections 450j-1(a) and 450j(c)(2), Congress used the phrase "amount of funds provided" to refer to the amount of money the Secretary is required to pay under ISDA contracts. See pp. 8-9, *supra*. The obviously parallel phrase "provision of funds" logically should be given a similar construction.

3. Contrary to petitioners' assertions, the court of appeals' reading of Section 450j-1 of the ISDA accords with that of the only other court of appeals that has considered the limits imposed by Section 450j-1(b). In *Ramah Navajo School Board, Inc.* v. *Babbitt*, 87 F.3d 1338 (D.C. Cir. 1996), the court of appeals explained:

> Congress clearly included [Section 405j-1(b)] to make evident that the Secretary is not required to distribute money [for ISDA CSCs] if Congress does not allocate that money to him under the Act. * * * Thus, if the money is not available, it need not be provided, despite a Tribe's claim that the ISDA 'entitles' it to the funds.

87 F.3d at 1345.

Notwithstanding the clear language of that opinion, petitioners claim that it is not consistent with the decision below. In particular, they characterize *Ramah* as distinguishing between the Tribe's right to payment on the one hand, and the Secretary's authority to disburse money on the other. See Oglala Pet. 15-16; Miccosukee Pet. 20-21. The D.C. Circuit in *Ramah*, however, did not adopt that distinction. To the contrary, it held that, "if the money is not available, *it need not be provided, despite a Tribe's claim that the ISDA 'entitles' it* to the funds." 87 F.3d at 1345 (emphasis added). And while the D.C. Circuit in *Ramah* also stated that Section 405j-1(b) does not "excuse the Secretary's obligation to follow the mandates of the statute," that assertion was made in rejecting the government's contention that the Secretary's *allocation* of funds *among* contracting tribal organizations, in the event of shortfalls like those here, was not judicially *reviewable*. 87 F.3d at 1345. Thus, the D.C. Circuit in *Ramah* nowhere held that the Secretary is legally

liable for breach of contract when reducing payments in response to an insufficient appropriation. Rather, that court simply rejected the claim that Congress "intended that any time Congress underfunds [the program] by even a small amount, the agency * * * has virtually unfettered (and unreviewable) authority to allocate [the appropriated funds] in any way the Secretary sees fit." *Ibid.*

Finally, petitioners' construction of *Ramah* is quite difficult to reconcile with the result the court of appeals ultimately reached in *Ramah* itself. There, the D.C. Circuit ultimately faulted the mechanism by which the Secretary had chosen to allocate reductions in CSC payments, and suggested that the Secretary consider a *pro-rata* reduction mechanism (like the one used here) instead. See 87 F.3d at 1348-1350. But if petitioners were correct that any CFCs not paid by the Secretary could be collected through litigation, see Miccosukee Pet. 16-17, the Secretary's initial allocation of funds among Tribes would have been of little moment; regardless of the initial allocation, any organization receiving less than full payment would (in petitioners' view) be entitled to collect the difference from the Judgment Fund in any event.

Oglala's reliance (Pet. 15) upon *Ramah Navajo Chapter* v. *Lujan*, 112 F.3d 1455 (10th Cir. 1997), is similarly misplaced. As the court of appeals recognized here (Oglala Pet. App. A11), the Tenth Circuit, in its *Ramah* decision, was faced with an entirely different issue. In particular, the Tenth Circuit was required to decide whether it was proper, when calculating the direct cost base for self-determination contracts, to include state program funds. Nowhere did that decision purport to address the meaning of Section 450j-1(b), or

the propriety of adjusting indirect cost payments in response to Congress's refusal to appropriate funds.

Petitioners also err in contending (Miccosukee Pet. 27-28; Oglala Pet. 17-18) that the court of appeals' decision conflicts with prior decisions of the Federal Circuit and its predecessor in this area. Relying on *New York Airways, Inc.* v. *United States*, 369 F.2d 743 (Ct. Cl. 1966), petitioners contend that they are entitled to full funding and payment of their CSCs notwithstanding congressional appropriation limitations. See, *e.g.* Miccosukee Pet. 16 ("[A] failure by Congress to appropriate sufficient funds does not limit the government's liability to pay the amounts specified in the contract."). The *New York Airways* case, however, distinguishes itself. In that case, the government entered into a private contract that did not limit the plaintiff's right to payment in the event that Congress failed to appropriate sufficient funds. Applying the terms of the contract, the court held the government liable, since the government had validly entered into a contract that provided an unqualified obligation to pay. 369 F.2d at 748.

As the court of appeals observed here, the contract in *New York Airways* is different from the ISDA funding agreements at issue in this case. In *New York Airways*, the government had an unqualified contractual obligation; neither the statute authorizing the contract nor the contract itself limited the government's obligation to pay based on the availability (or unavailability) of appropriations. Unlike the *New York Airways* contract, the ISDA funding agreements incorporate provisions that condition funding on the availability of appropriations. See 25 U.S.C. 450*l*(c); Miccosukee C.A. App. 69; Oglala C.A. App. 20. Moreover, the statute authorizing the self-determination contracts expressly

conditions payment on the availability of appropriations. 25 U.S.C. 450j-1(b).

The remaining cases upon which Oglala relies (Pet. 17-18) are distinguishable for similar reasons. Those decisions address the relationship between the government's sovereign powers and its capacity to contract, such as where Congress enacts legislation that abrogates the government's pre-existing contractual obligations. See *Yankee Atomic Elec. Co.* v. *United States*, 112 F.3d 1569, 1573 (Fed. Cir. 1997) (legislation affecting a prior fixed price agreement between the government and a provider of uranium enrichment services), cert. denied, 524 U.S. 951 (1998); *United States* v. *Winstar Corp.*, 518 U.S. 839 (1996) (legislation altering prior accounting agreements between the government and financial institutions). Here, the government's appropriations legislation did not abrogate any pre-existing contractual obligations. Instead, both the ISDA funding agreements themselves and the statute that authorized them expressly anticipated the possibility of insufficient appropriations and provided that such an insufficiency would affect the amount of payments made. By funding CSCs up to the limit set by Congress, the Secretary both satisfied the requirements of the appropriations Acts and fulfilled his statutory and contractual obligations.

4. Petitioners rely heavily on congressional testimony and reports leading up to the passage of the ISDA to argue that the legislative history of the ISDA mandates that the government fully fund CSCs. Oglala Pet. 6-13; Miccosukee Pet. 13-17. Because the language of the ISDA is clear, the court of appeals properly rejected petitioners' attempt to rely on an imputed legislative intent. *United States* v. *Ron Pair Enters.*, 489 U.S. 235, 241 (1989) (Where "the statute's language

is plain, the sole function of the courts is to enforce it according to its terms.") (internal quotation marks omitted); *West Virginia Univ. Hosps., Inc.* v. *Casey*, 499 U.S. 83, 98 (1991) (statutory text is the "best evidence" of congressional purpose). Moreover, the relevant legislative history shows that Congress sought to restrict the *Secretary's* discretion when Congress provided sufficient funds; they do not show that Congress sought to restrict its *own* authority to control the federal fisc by restricting appropriations, especially since the text of the Act and of the model contract shows that Congress preserved that latter power.

For similar reasons, the court of appeals properly rejected petitioners' invocation (see, *e.g.*, Oglala Pet. 13-14) of the Indian "Canon of Construction." That canon may be used to resolve ambiguities in treaties between the government and Indian Tribes; it cannot be used to create ambiguities that do not otherwise exist. See, *e.g.*, *South Carolina* v. *Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506 (1986) (canon "does not permit reliance on ambiguities that do not exist").

5. Finally, to the extent that petitioners claim that they have been harmed by their reliance on an expectation that CSCs would be fully reimbursed, the court of appeals properly found that such reliance would not be reasonable. *Heckler* v. *Community Health Servs.*, 467 U.S. 51, 59 (1984) (defining reliance as reasonable where "the party claiming the estoppel did not know nor should it have known" of the eventuality that arose). The court of appeals reasoned that the plain text of Section 450j-1(b) as well as the terms of the model contract, 25 U.S.C. 450*l*(c)—which condition funding on the availability of appropriations—negate any argument that reliance was reasonable. Miccosukee Pet. App. 12a; Oglala Pet. App. A12. Moreover,

this Court has refused to permit a claim of estoppel where the award sought "would be in direct contravention of the federal statute upon which" the plaintiff's "ultimate claim to the funds must rest." *OPM* v. *Richmond*, 496 U.S. 414, 424 (1990). Accordingly, even if petitioners' reliance were reasonable, no recovery could be had.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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